

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Edward A. Garvey
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Qwest Wholesale Service
Quality Standards

ISSUE DATE: March 4, 2002

DOCKET NO. P-421/M-00-849

ORDER SETTING REPORTING
REQUIREMENTS AND FUTURE
PROCEDURES

PROCEDURAL HISTORY

On June 28, 2000, the Commission opened this case to develop service quality standards for wholesale transactions between U S WEST Communications, Inc. (now Qwest Corporation) and competitive local exchange carriers (CLECs), who buy Qwest's finished services to resell and Qwest's unbundled network elements to incorporate into their own finished retail services. Qwest agreed to participate in the case as one of the conditions of a settlement in the Commission proceeding on its petition for approval of the Qwest/U S WEST merger.¹

On August 15, 2000, the Commission incorporated into this case an investigation to determine whether there is a need to develop wholesale access service quality standards for Qwest and if so, what standards would be appropriate.²

¹ In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc. and U S WEST Communications, Inc., Docket No. P-3009, 3052, 5096, 421, 3017/PA-99-1192, ORDER ACCEPTING SETTLEMENT AGREEMENTS AND APPROVING MERGER SUBJECT TO CONDITIONS (June 28, 2000).

² In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S WEST Communications, Inc. Regarding Access Services, Docket No. P-421/C-99-1183, ORDER FINDING JURISDICTION, REJECTING CLAIMS FOR RELIEF, AND OPENING INVESTIGATION (August 15, 2000).

On March 19, 2001, the Commission referred the case to the Office of Administrative Hearings for mediation and evidentiary development. Following that process, all parties filed post-hearing briefs and proposed wholesale service quality standards. WorldCom, Inc. and Time Warner Telecom of Minnesota, LLC also filed a joint proposal to require Qwest to file periodic, detailed reports on its performance in providing special access services.

On February 5, 2002, the case came before the Commission.

FINDINGS AND CONCLUSIONS

I. The Parties and Their Proposals

The parties to this case are as follows:

- Qwest Corporation
- The CLEC/Agency Coalition, composed of the following parties:
 - Minnesota Department of Commerce
 - Residential and Small Business Utilities Division of the Office of the Attorney General
 - AT&T Communications of the Midwest, Inc.
 - Eschelon Telecom of Minnesota, Inc.
 - McLeodUSA Telecommunications Services, Inc.
 - WorldCom, Inc.
 - Covad Communications Company
 - New Edge Network, Inc., d/b/a New Edge Networks
 - Encore Communications, L.L.C.;
 - NorthStar Access, L.L.C.;
 - US Link, Inc.
 - Rhythms Links Inc.
 - Onvoy, Inc.
 - Global Crossing Local Services, Inc.
 - Time Warner Telecom of Minnesota, LLC

In general, Qwest proposed wholesale service quality standards based on achieving parity between its provision of wholesale services to CLECs and its provision of the same services to its own retail customers.

The CLEC/Agency Coalition proposed wholesale service quality standards based on service-specific performance benchmarks. Two members of the Coalition, WorldCom, Inc. and Time Warner Telecom of Minnesota, LLC, also filed an alternative proposal on special access services, which would require Qwest to file periodic, detailed reports on its performance in providing special access services.

II. Commission Action

A. Staff Report Requested on Wholesale Service Quality Standards

The Commission has examined the proposed wholesale service quality standards filed by Qwest and the proposed wholesale service quality standards filed by the CLEC/Agency Coalition. The two proposals differ sharply in their underlying philosophies, substantive requirements, and, in all likelihood, practical effects. Both proposals have significant strengths and weaknesses.

While the Commission may ultimately adopt one of the two proposals substantially as proposed, the Commission is convinced that it should first explore the possibility that other, as yet undeveloped, options would serve the public interest more effectively. The Commission will therefore defer action on the merits of these proposals pending further staff briefing, with special emphasis on identifying workable alternatives to the parties' proposals.

The Commission will circulate staff's work product to the parties for written comment. It will then reschedule the case for decision as quickly as practicable, confident that it has the record necessary to make an informed decision on these complex and far-reaching issues.

B. Special Access Performance Reporting Required

In August 2000 the Commission found evidence of a clear need to investigate and carefully monitor Qwest's performance in providing wholesale access services.³ These services are critical to an adequate telecommunications network, not just because they provide access to the long distance network, but because they provide large institutional users – hospitals, schools, business campuses – with the capacity for high-speed data transmission, including high-speed internet access.

The Commission therefore ordered Qwest to file detailed monthly reports on its provision of these services, using a set of reporting requirements prepared by the Department of Commerce in consultation with AT&T. These reporting requirements were designed to help isolate and identify any instances or patterns of inadequate service, discriminatory behavior, or unreasonable investment decisions relating to access infrastructure.

Qwest duly made the filings required under the August 15, 2000 Order, but Time Warner and WorldCom both report that, not only do concerns about service quality and discrimination continue, but that the information the Order requires has not been as helpful as anticipated in sorting out the facts and factors that determine access service quality. The two companies therefore filed a proposal for new reporting requirements and asked the Commission to impose them immediately, independent of any decision on wholesale service quality standards.

³ In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S WEST Communications, Inc. Regarding Access Services, Docket No. P-421/C-99-1183, ORDER FINDING JURISDICTION, REJECTING CLAIMS FOR RELIEF, AND OPENING INVESTIGATION (August 15, 2000).

Qwest opposed the new reporting requirements on jurisdictional grounds, claiming that, since most of these services are federally tariffed, they fall within the exclusive jurisdiction of the Federal Communications Commission.

The Commission examined Qwest's jurisdictional claim in detail when it imposed the original reporting requirements in the August 15 Order. The Commission incorporates that Order by reference⁴ and continues to believe, for all the reasons expressed there, that it has jurisdiction over these services for purposes of enforcing the service quality and non-discrimination requirements of Minnesota law.

The Commission also concurs with WorldCom and Time Warner that the reporting requirements they propose are essential if the Commission is to conclude the careful monitoring of wholesale access services that it undertook in the August 15 Order. The Commission will therefore require Qwest to file the requested information as soon as practicable.

The Commission will so order.

ORDER

1. The Commission defers further action on the development of wholesale service quality standards pending a staff report and recommendation, which will be made available to the Commission and the parties approximately 30 days from the date of the meeting.
2. Comments on the staff report shall be filed within 21 days of the date it is mailed to parties.
3. Qwest shall file performance data on its provision of wholesale access services, as proposed by AT&T and WorldCom, in the aggregate and individually for each wholesale customer, using the business rules and standards set forth in the document attached hereto and titled "ILEC Performance Measurements and Standards." This reporting shall begin with the first full month that begins 60 days from the date of this Order, with data being reported by the end of the following month.
4. The Commission delegates to the Executive Secretary the authority to vary the time lines set in this Order.

⁴ In the Matter of the Complaint of AT&T Communications of the Midwest, Inc. Against U S WEST Communications, Inc. Regarding Access Services, Docket No. P-421/C-99-1183, ORDER FINDING JURISDICTION, REJECTING CLAIMS FOR RELIEF, AND OPENING INVESTIGATION (August 15, 2000).

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).